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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 33053
	)	
v.	)	
	)	
MARIO A. RUIZ, JR.,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

FILED - COPY
MAR 17 2008
Supreme Court ____ Court of Appeals ____
Entered on ATS by: ____

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

HONORABLE MICHAEL E. WETHERELL
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Mario Ruiz was found guilty of a single count of trafficking in more than 28 grams of methamphetamine. He received a unified sentence of ten years, with three years fixed. On appeal, he contends that his conviction and sentence should be vacated, and his case remanded for a new trial, because, at trial, the district court erred in limiting his cross-examination of a key prosecution witness.

Statement of the Facts and Course of Proceedings

During the summer of 2005, police working through a then-confidential informant, Megan Larsen, arranged to purchase approximately two ounces of methamphetamine from a young man named Josh Morrison. (*See* Tr., p.13, L.24 – p.17, L.6.)[1] Mr. Morrison was a drug dealer who was known to have supplied drugs to Ms. Larsen previously. (Tr., p.143, L.20 – p.144, L.7.)

On August 11, 2005, the date of the controlled buy, the police set Ms. Larsen up with "a wire," followed her as she went to meet Mr. Morrison, then followed Ms. Larsen and Mr. Morrison as they drove Ms. Larsen's vehicle to a different location, ostensibly to meet Mr. Morrison's supplier. (*See* Tr., p.13, L.24 – p.20, L.19 (testimony of Detective McDaniel), p.148, L.13 – p.152, L.24 (testimony of Ms. Larsen), p.130, L.11 – p.133, L.5 (testimony of Deputy Walthall).) After Ms. Larsen and Mr. Morrison parked in a Fred Meyer parking lot, officers observed Ms. Larsen get out of the vehicle and a man with a

[1] There are two separately-bound transcripts in the record in this case. The original transcript (containing the bulk of Mr. Ruiz's trial, as well as his sentencing hearing) is referenced herein as "Tr." The alter-prepared supplemental transcript (containing the jury selection and opening arguments from the first day of trial) is not cited herein.

dark complexion get in. (Tr., p.20, L.21 – p.21, L.24, p.135, L.2 – p.136, L.13.) After a short time, the man with the dark complexion got out, Ms. Larsen got back in, Ms. Larsen dropped Mr. Morrison off at his car, and Ms. Larsen met the officers to turn over the nearly two ounces of methamphetamine she had purchased from Mr. Morrison. (Tr., p.21, L.25 – p.23, L.4, p.136, L.6 – p.139, L.11.)

On August 23, 2005, the police arrested Mr. Morrison. (Tr., p.66, Ls.17-19, p.69, Ls.6-9.) Mr. Morrison was charged with trafficking in more than 28 grams of methamphetamine (Tr., p.60, Ls.16-21), which carries a mandatory minimum sentence of three years fixed and allows for a life sentence, I.C. § 37-2732B(a)(4). Immediately after being arrested, Mr. Morrison told the police that his "supplier" was someone named "Jared," but, when asked by the police about someone named "Mario," Mr. Morrison implicated Mario Ruiz in the August 11, 2005 controlled buy. (Tr., p.69, L.6 – p.70, L.22, p.94, L.6 – p.95, L.4.)

On August 24, 2005, Mr. Ruiz was charged with trafficking in more than 28 grams of methamphetamine. (R., pp.6-7; *see also* R., pp.16-17.)

At some point, Mr. Morrison cut a deal with the State whereby he agreed to testify against Mr. Ruiz and, in exchange, the State agreed to reduce his charge to delivery of a controlled substance[2] and to recommend that he be placed on probation. (Tr., p.60, L.16 – p.61, L.3, p.79, Ls.19-25.) In accordance with that deal, Mr. Morrison did indeed testify against Mr. Ruiz at Mr. Ruiz's trial, identifying Mr. Ruiz as the supplier of the methamphetamine involved in the August 11, 2005 controlled buy. (*See generally* Tr., p.59, L.15 – p.102, L.15.) Ultimately, however, Mr. Ruiz was not allowed

to fully cross-examine Mr. Morrison about his arrangement with the State, as the district court forbade defense counsel from asking Mr. Morrison about the mandatory minimum fixed prison sentence he would have been facing had he not agreed to cooperate with the State. (*See* Tr., p.74, L.15 – p.77, L.22.)

At trial, the only other witness to identify Mr. Ruiz as having supplied methamphetamine to Mr. Morrison was Ms. Larsen. (*See* Tr., p.157, Ls.12-17, p.175, L.16 – p.176, L.11.)[3] However, her testimony is also suspect since she too had much to gain by saying what she thought the police wanted to hear. Not only had Ms. Larsen received payment from the police for her work as a confidential informant, but she had also had her own drug charges dismissed. (Tr., p.147, L.9 – p.148, L.6, p.159, Ls.5-10; *see also* Tr., p.129, L.16 – p.130, L.10 (Deputy Walthall testifying that no explicit promises were made to Ms. Larsen, but that it was made clear that if she were to assist the police in "work[ing] up the ladder," "recommendations" would be made to the prosecutor on her case).) Nevertheless, at the conclusion of the trial, the jury found Mr. Ruiz guilty. (R., p.39.)

On April 28, 2006, the district court held a sentencing hearing. (*See generally* R., pp.56-57; Tr., p.216, L.1 – p.230, L.7.) Ultimately, the district court imposed upon Mr. Ruiz a sentence of ten years, with three years fixed. (R., p.59.) The district court filed its Judgment of Conviction and Commitment on May 1, 2006. (R., pp.58-60.)

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[2] Delivery of a controlled substance carries a maximum punishment of life in prison, but it has no mandatory minimum sentence, much less a mandatory minimum sentence with a requirement that that minimum sentence be fixed. I.C. § 37-2732(a)(1)(A).

[3] Two police officers testified at Mr. Ruiz's trial about having "surveilled" the controlled buy, but neither officer could identify Mr. Ruiz as the man with the dark complexion who met with Mr. Morrison. (*See* Tr., p.20, L.21 – p.21, L.24 (Detective McDaniel testifying that he could see Mr. Morrison and Ms. Larsen, initially, but that his view was then obstructed by a large SUV), p.135, L.23 – p.136, L.13 (Deputy Walthall testifying that he could recognize Mr. Morrison and Ms. Larsen, and that he could see a "dark complected . . . male" approach Ms. Larsen's vehicle).)

On May 11, 2006, Mr. Ruiz timely filed his Notice of Appeal.[4] (R., pp.62-64.) On appeal, Mr. Ruiz contends that his conviction and sentence should be vacated, and his case remanded for a new trial, because the district court erred in limiting his cross-examination of Mr. Morrison, a key witness for the prosecution.

[4] Mr. Ruiz filed an Amended Notice of Appeal on June 15, 2006. (R., pp.71-73.)

ISSUE

Did the district court commit reversible error in limiting Mr. Ruiz's cross-examination of a key prosecution witness?

ARGUMENT

The District Court Committed Reversible Error In Limiting Mr. Ruiz's Cross-Examination Of A Key Prosecution Witness

A. Introduction

During the State's case-in-chief, the prosecutor called Josh Morrison to the witness stand. (Tr., p.59, Ls.11-18.) Almost immediately, in what was obviously an attempt to pre-empt any impeachment of Mr. Morrison's testimony by the defense, the prosecutor himself inquired about the deal that had been struck between Mr. Morrison and the State. (*See* Tr., p.60, L.16 – p.17.) Specifically, the prosecutor elicited testimony to the effect that Mr. Morrison had been charged with trafficking in more than 28 grams of methamphetamine but had reached an agreement with the State whereby, in exchange for his testimony against Mr. Ruiz, his trafficking charge would be reduced to delivery of a controlled substance, the State would recommend a sentence of probation (with some local jail time), and the State would move to have him released on his own recognizance. (Tr., p.60, L.16 – p.17.) As noted above, Mr. Morrison then went on to implicate Mr. Ruiz. (*See generally* Tr., p.61, L.18 – p.71, L.20.)

Later, in the midst of defense counsel's cross-examination of Mr. Morrison, the State moved (outside the presence of the jury) to preclude the defense from inquiring into the mandatory minimum fixed sentence that Mr. Morrison would have faced had he not struck a deal with the State. (Tr., p.74, Ls.15-17.) Defense counsel objected, arguing both that such impeachment is "fair game" because the jury should be allowed to hear that Mr. Morrison "escapes from three years in the State pen" through his deal with the State (Tr., p.76, Ls.2-10), and that the State had "opened the door" to such

evidence by questioning Mr. Morrison regarding the terms of the agreement he had reached with the State (Tr., p.74, Ls.18-22). Ultimately, however, the district court ruled in favor of the State, limiting the defense counsel's cross-examination of Mr. Morrison to the fact that a recommendation for probation would be made. (Tr., p.75, L.14 – p.76, L.1, p.76, L.11 – p.77, L.22.) This ruling was based upon the district court's concern that the jury not be allowed to infer that Mr. Ruiz was facing a mandatory minimum sentence of three years fixed.[5] (Tr., p.75, L.14 – p.76, L.1, p.76, L.11 – p.77, L.22.)

Based on the district court's ruling, defense counsel inquired of Mr. Morrison regarding one of his incentives to testify falsely in effort to please the State—the State's promise to recommend that he receive probation (Tr., p.79, Ls.19-23); however, while he was able to ask about the "lesser" charge of delivery of a controlled substance (Tr., p.79, Ls.13-18), he was not allowed to ask any questions which would have allowed the jury to understand why delivery of a controlled substance represented a "lesser" charge. Thus, the defense was prevented from apprising the jury of one of Mr. Morrison's other major incentives to testify falsely in an effort to please the State—the State's promise to take away the requirement that he serve three years in an Idaho

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[5] The district court initially seemed to base its ruling on the mistaken belief that trafficking and delivery carry different maximum sentences, apparently reasoning that pointing out these different maximums would be adequate to reveal Mr. Morrison's incentive to lie for the State:

> I do think it is appropriate for [defense counsel] to point out that the defendant could obtain—could have received a sentence up to life in prison.
>
> I think that once you talk about a reduction in sentence, the defense has the right to explore the extent of that reduction because I believe it goes to the credibility of the witness. You can't talk about the minimum mandatories [sic], but you can talk about the fact the sentence that he faced could have been up to life.

(Tr., p.75, Ls.1-11.) However, after defense counsel pointed out that both the greater charge of trafficking in more than 28 grams of methamphetamine and the lesser charge of delivery of methamphetamine carry maximum punishments of life in prison (Tr., p.75, Ls.12-13), the district court appears to shifted to the reasoning discussed above. (*See* Tr., p.75, L.14 – p.77, L.22.)

prison with no chance of parole should its recommendation of probation be rejected by Mr. Morrison's sentencing judge (or should Mr. Morrison's probation ever be revoked).

As set forth in detail below, Mr. Ruiz contends that the district court's limitation of his cross-examination of Mr. Morrison constituted reversible error. Specifically, he contends that the district court's ruling was in error because it violated his Constitutional right to confrontation, as well as Idaho Rules of Evidence 401 and 403; he further contends that the error was not harmless and, thus, requires that he be granted a new trial.

B. Standards Of Review

Constitutional issues are questions of law over which Idaho's appellate courts exercise free review. *City of Boise v. Frazier*, 143 Idaho 1, 2, 137 P.3d 388, 389 (2006).

On the other hand, the standard of review applicable to the admission of evidence under Idaho Rules of Evidence 401 and 403 are as follows:

> Separate standards of review apply to issues of admissibility of evidence under Idaho Rules of Evidence 401 and 403. We freely review questions of relevancy under I.R.E. 401 because relevancy is a question of law. On the question of whether the evidence's probative value is substantially outweighed by unfair prejudicial impact, however, we will overturn the trial court's decision only for abuse of discretion. Where a matter is committed to the discretion of the trial court, we conduct a three-tiered inquiry on appeal. We consider whether: (1) the lower court rightly perceived the issue as one of discretion; (2) whether the court acted within the boundaries of such discretion and consistently with any legal standards applicable to specific choices; and (3) whether the court reached its decision by an exercise of reason.

State v. Waddle, 125 Idaho 526, 528, 873 P.2d 171, 173 (Ct. App. 1994) (citations omitted).

C. In Preventing Mr. Ruiz From Fully Cross-Examining A Key Prosecution Witness With Regard To That Witness's Biases, Prejudices, And Ulterior Motives, The District Court Violated Mr. Ruiz's Constitutional Right To Confront The Witnesses Against Him

The Sixth Amendment to the United States Constitution provides that every criminal defendant has "the right . . . to be confronted with the witnesses against him."[6] U.S. CONST. Amend. VI. This right necessarily includes the right to cross-examine witnesses:

> The main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. The opponent demands confrontation, not for the idle purpose of gazing upon the witness, or of being gazed upon by him, but for the purpose of cross-examination, which cannot be had except by the direct and personal putting of questions and obtaining immediate answers.

Davis v. Alaska, 415 U.S. 308, 315-16 (1974) (quoting 5 J. Wigmore, Evidence § 1395, p.123 (3d ed. 1940)).

In discussing a defendant's right to cross-examination under the confrontation clause, the United States Supreme Court has described it is the right to have "an *opportunity* for effective cross-examination, not [the right to] cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 19 (1985) (emphasis in original). The Court has repeatedly recognized that such an "opportunity for effective cross-examination" includes the right to cross-examine adverse witnesses on matters relating to the biases, prejudices, and ulterior motives that might color the witness's testimony against the accused.

[6] Since the right to confrontation is deemed to be a fundamental right, it is applicable to the states through the due process clause of the Fourteenth Amendment. *Pointer v. Texas*, 380 U.S. 400, 403-06 (1965).

In *Davis v. Alaska*, for example, the defendant, charged with burglary for breaking into a bar and grand larceny for allegedly stealing a safe from that bar, wished to cross-examine a critical prosecution witness (whose testimony had placed the defendant, with "something like a crowbar" in his hands, near the location where the abandoned safe was had been discovered) regarding the fact that that witness, who apparently lived nearby, was on juvenile probation for having committed two prior burglaries. *Davis*, 415 U.S. at 309-11. The defendant's argument was that such cross-examination would reveal two motives for the witness to have misidentified the defendant: (1) to shift suspicion away from himself; and/or (2) to give the appearance of cooperating with the police and, thus, avoid a retaliatory probation revocation. *Id.* at 311. Ultimately, the Supreme Court held that the state trial court had violated the defendant's right to confrontation by precluding the defendant's desired cross-examination:

> We cannot speculate as to whether the jury, as sole judge of the credibility of a witness, would have accepted this line of reasoning had counsel been permitted to fully present it. But we do conclude that the jurors were entitled to have the benefit of the defense theory before them so that they could make an informed judgment as to the weight to place on [the witness's] testimony which provided "a crucial link in the proof . . . of petitioner's act." *Douglas v. Alabama*, 380 U.S., at 419, 85 S.Ct., at 1077. The accuracy and truthfulness of [the witness's] testimony were key elements in the State's case against petitioner. The claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of Green's vulnerable status as a probationer, *cf. Alford v. United States*, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931), as well as of Green's possible concern that he might be a suspect in the investigation.

Id. at 317-18 (footnote omitted).

Later, in *Delaware v. Van Arsdall*, 475 U.S. 673 (1986), the Court reaffirmed its holding from *Davis*. In *Van Arsdall*, the defendant had sought to impeach the testimony

of a prosecution witness by cross-examining that witness about the fact that a criminal charge against him had been dismissed after he had agreed to speak to the prosecutor about the defendant's case; however, the defendant's proposed cross-examination had been barred by the trial court based on Delaware Rule of Evidence 403.[7] *Id.* at 676-77. The Supreme Court held that the defendant's right to confrontation had been violated because "a jury might reasonably have found" that the government's dismissal of the pending criminal charge "furnished the witness a motive for favoring the prosecution in his testimony . . . ." *Id.* at 679.

Most recently, in *Olden v. Kentucky*, 488 Idaho 227 (1988), a kidnapping/rape/sodomy case in which the defense theory was that the sexual contact in question had been purely consensual, the United States Supreme Court, this time in a *per curiam* opinion, held that under *Davis* and *Van Arsdall* the defendant's right to confrontation had been violated when he was precluded from cross-examining the alleged victim about her relationship and subsequent cohabitation with another man. *Id.* at 231-32. The Court reasoned that evidence of the alleged victim's ongoing relationship with another man could have demonstrated a motivation for her to concoct a rape story to cover up her infidelity. *See id.* at 229-30, 231-32.

The Idaho Court of Appeals, adhering to *Davis*, *Van Arsdall*, and *Olden*, have likewise recognized that such an "opportunity for effective cross-examination" includes the right to cross-examine adverse witnesses on matters relating to any biases, prejudices, and ulterior motives that might color their testimony against the accused.

[7] The version of Delaware Rule of Evidence 403 then in effect was substantively identical to the current version of Idaho Rule of Evidence 403. (*Compare Van Arsdall*, 475 U.S. at 676-77 n.2 (quoting the Delaware Rule) *with* I.R.E. 403.)

See, e.g., State v. Harshbarger, 139 Idaho 287, 293-94, 77 P.3d 976, 982-83 (Ct. App. 2003) (finding a confrontation clause violation where the district court precluded the defendant from cross-examining a government witness regarding felony charges against that witness that had been reduced to misdemeanors and eventually dismissed altogether because exploration of that topic could have raised an inference that the witness testified favorably for the State based on her implied understanding or expectation of what would happen with regard to her own case); *State v. Green*, 136 Idaho 553, 556-57, 38 P.3d 132, 135-36 (Ct. App. 2001) (finding a confrontation clause violation where the district court precluded the defendant from cross-examining a government witness regarding a felony charge pending against that witness because the existence of the charge provided some motivation for the witness to testify to the State's liking).

Mr. Ruiz contends that his case is no different than any of the cases discussed above. At trial, Mr. Ruiz sought to cross-examine Mr. Morrison, a critical witness for the State, as to the details of Mr. Morrison's plea deal with the State. Obviously, doing so would have raised serious questions as to Mr. Morrison's credibility because Mr. Morrison's incentive to testify to the State's liking would have been laid bare before the jury. Clearly, this is precisely the type of cross examination that must be allowed under the confrontation clause. *Olden*, 488 U.S. at 231-32; *Van Arsdall*, 475 U.S. at 679; *Davis*, 415 U.S. at 317-18; *Harshbarger*, 139 Idaho at 293-94, 77 P.3d at 982-83; *Green*, 136 Idaho at 556-57, 38 P.3d at 135-36.

However, as noted above, Mr. Ruiz was only allowed to ask about the maximum punishment for trafficking in methamphetamine, the fact that Mr. Morrison's charge

would be reduced from trafficking in more than 28 grams of methamphetamine to the "lesser" charge of delivery of methamphetamine, and the State's promise to recommend that Mr. Morrison be placed on probation. Mr. Ruiz was *not* allowed to ask Mr. Morrison about his understanding of the mandatory minimum sentence he would be facing under a delivery charge (none), as compared to a trafficking in more than 28 grams charge (three years, all fixed). Thus, Mr. Ruiz was *not* allowed to ask Mr. Morrison the critical questions that would have allowed the jury to understand why delivery of methamphetamine was considered a "lesser" charge, to comprehend just how significant it is for a defendant to have his charge reduced from trafficking in more than 28 grams of methamphetamine to mere delivery of methamphetamine, and, to ultimately, appreciate the tremendous incentive for Mr. Morrison to try to please the State and, thus, obtain the benefit of the reduced charge. Because, Mr. Ruiz was not allowed to explore the biases, prejudices, and ulterior motives that Mr. Morrison had to testify favorable for the State, his right to confrontation was denied. *Olden*, 488 U.S. at 231-32; *Van Arsdall*, 475 U.S. at 679; *Davis*, 415 U.S. at 317-18; *Harshbarger*, 139 Idaho at 293-94, 77 P.3d at 982-83; *Green*, 136 Idaho at 556-57, 38 P.3d at 135-36.

D. In Preventing Mr. Ruiz From Fully Cross-Examining A Key Prosecution Witness With Regard To That Witness's Biases, Prejudices, And Ulterior Motives, The District Court Violated The Idaho Rules Of Evidence

Although the prosecutor did not explicitly mention the Idaho Rules of Evidence when he made his motion to limit Mr. Ruiz's cross-examination of Mr. Morrison, his motion appears to have been based on the belief that the subject of punishment is *never* relevant under I.R.E. 401. He argued as follows: "I don't think there should be

any mention of mandatory minimums. *Penalty is not a concern for the jury.*"[8] (Tr., p.74, Ls.15-17 (emphasis added).)

In ruling on the State's motion, the district court did not explicitly mention the Idaho Rules of Evidence either. (*See* Tr., p.74, L.25 – p.77, L.22.) However, a close look at the district court's ruling reveals that it quite clearly rejected the State's contention that the subject of punishment is *never* relevant under I.R.E. 401, specifically finding that the subject of Mr. Morrison's punishment was relevant to Mr. Morrison's credibility. (Tr., p.74, L.25 – p.75, L.8; *see also* Tr., p.75, Ls.14-19 (allowing defense counsel to cross-examine Mr. Morrison with regard to the maximum sentence he could receive, as well as the State's promise to recommend probation, p.76, Ls.11-12 (same), p.76, L.24 – p.77, L.2 (same), p.77, Ls.7-11 (same).)

Nevertheless, the district court granted the State's motion, albeit on alternate grounds. It granted the State's motion based upon: (a) its concern that the jury not find out that the crime of trafficking in more than 28 grams of methamphetamine (the same crime for which Mr. Ruiz was on trial) carries a mandatory minimum fixed sentence[9]; and (b) its balancing of that concern against Mr. Ruiz's right to attack Mr. Morrison's credibility.[10] (Tr., p.76, Ls.15-23; *see also* Tr., p.75, L.9 (precluding the defense from cross-examining Mr. Morrison regarding the mandatory minimum sentence for

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[8] Responding to that argument, defense counsel correctly observed that the prosecutor had already brought up the subject of Mr. Morrison's punishment in his direct examination of Mr. Morrison. (Tr., p.74, Ls.18-22; *see also* Tr., p.60, L.16 – p.61, L.17 (Mr. Morrison's direct examination testimony wherein he was asked to explain some of the terms of his agreement with the State, including the State's promise to recommend probation).)

[9] Presumably, the district court did not want the jury to learn of the mandatory minimum fixed sentence that Mr. Ruiz faced for fear that the jury would find that sentence to be excessive and, thus, engage in an act of "nullification," *i.e.*, acquit Mr. Ruiz without regard to the evidence. Presumably, the district court's concern in such a situation (as in any nullification situation) was that the jury would acquit Mr. Ruiz even if he was guilty.

trafficking in more than 28 grams of methamphetamine), p.75, L.20 – p.76, L.1 (same), p.77, Ls.2-3 (same).) Because the district court did not articulate the legal basis for the balancing test ultimately employed, Mr. Ruiz can only assume that it ruled in the State's favor only after balancing the probative value of evidence of the mandatory minimum fixed sentence against some countervailing interest which is set forth in I.R.E. 403.

However, for the reasons set forth in detail below, the district court's apparent analysis under Rules 401, 402, and 403 was flawed.

1. Evidence Of The Biases, Prejudices, And Ulterior Motives Of the State's Witnesses, Including Mr. Morrison, Is Relevant Under Idaho Rule Of Evidence 401

The Idaho Rules of Evidence provide that "relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." I.R.E. 401. Under this standard, even the district court had to recognize that, as a general proposition, allegations of criminal conduct against the State's witnesses, as well as any agreements that might exist between those witnesses and the State with relation to those allegations of criminal conduct, constitute "relevant evidence" under Rule 401 because they make it less probable that the State's witness is credible (*see* Tr., p.74, L.25 – p.75, L.8)—a fact which is always of consequence to the determination of the action. *See, e.g., State v. Gomez*, 137 Idaho 671, 675, 52 P.3d 315, 319 (2002) (finding to be relevant the fact that two government witnesses had grown marijuana and the government may have promised not to prosecute them in

[10] Presumably, the district court concluded that the State's interest in avoiding nullification outweighed Mr. Ruiz's right to fully illuminate the biases, prejudices, and ulterior motives of the key witness against him.

exchange for their cooperation in the case against the defendant); *cf.*, *e.g.*, *Davis*, 415 U.S. at 316 (in the context of the Constitutional right to confrontation, holding that "[t]he partiality of a witness is subject to exploration at trial, and is 'always relevant as discrediting the witness and affecting the weight of his testimony'") (quoting 3A J. Wigmore, evidence § 940, p.775 (Chadbourn rev. 1970)). Thus, the contours of Mr. Morrison's deal with the State and, in particular, the details of the benefits he was to receive for his testimony against Mr. Ruiz, are plainly relevant.

2. The Probative Value Of Evidence Of The Biases, Prejudices, And Ulterior Motives Of The State's Witnesses Is Not Substantially Outweighed By Any Recognized Countervailing Interests Of The State And, Thus, That Evidence Was Admissible Under Idaho Rules Of Evidence 402 And 403

The Idaho Rules of Evidence provide that "[a]ll relevant evidence is admissible except as otherwise provided" by the other Rules of Evidence. I.R.E. 402. One of the Rules which places a limitation on the admission of relevant evidence is Rule 403, which provides that relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." I.R.E. 403.

In this case, the district court did not make any explicit finding that the probative value of evidence of the mandatory minimum fixed sentence which Mr. Morrison dodged by testifying against Mr. Ruiz was substantially outweighed by any of the countervailing interests identified in Rule 403; nevertheless, as noted above, the district court appears to have undertaken a Rule 403-type of analysis in precluding the defense from inquiring about the mandatory minimum fixed sentence avoided. (*See* Tr., p.76, Ls.15-23.) As

set forth below, to the extent that the district court did undertake an analysis under Rule 403, its conclusion represents an abuse of discretion.

While Rule 403 identifies six State interests which, if they substantially outweigh the probative value of the evidence in question, could support a decision to exclude that evidence, none of those interests is particularly significant, and certainly none of them substantially outweigh the probative value of Mr. Morrison's testimony about the mandatory minimum sentence at issue. As was alluded to in Part C above, there was tremendous probative value to evidence of Mr. Morrison's understanding about the mandatory minimum he faced on the trafficking charge. Had Mr. Ruiz been allowed to ask Mr. Morrison the critical questions that would have allowed the jury to understand why delivery of methamphetamine was considered a "lesser" charge, and to comprehend just how significant it is for a defendant to have his charge reduced from trafficking in more than 28 grams of methamphetamine to mere delivery of methamphetamine, it could have appreciated the fact that Mr. Morrison had a uniquely compelling incentive to make every effort to try to please the State.

As for the countervailing interests identified in Rule 403, the cross-examination Mr. Ruiz sought clearly would *not* have caused an undue delay or wasted any time because questioning Mr. Morrison about his understanding of the mandatory minimum sentence at issue would have taken mere seconds—surely much less time than was spent arguing over whether Mr. Ruiz should be allowed to so inquire; it clearly would *not* have resulted in the "needless presentation of cumulative evidence" because the mandatory minimum had not yet come up; and it clearly would *not* have misled the jury or confused the issues because there is nothing misleading or confusing about the fact

that Mr. Morrison avoided a mandatory three years in a state prison by testifying against Mr. Ruiz (in fact, as noted, the cross-examination would have actually assisted the jury by explaining why the prosecutor referred to delivery charge as a "lesser" charge). Moreover, while the district appears to have been concerned about the risk of unfair prejudice to the State, *i.e.*, jury nullification, that concern was ill-founded for two reasons. First, the district court was willing to allow the jury to hear about the maximum punishment for trafficking in methamphetamine (*see, e.g.*, p.74, L.25 – p.75, L.4), so the risk of jury nullification would be present (to a certain extent) anyway. Second, and more importantly, any concern that the district court had about jury nullification ought to have been alleviated by the fact that it had given pre-proof jury instructions which included the following admonition: "Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. . . ." (Instruction No. 9[11]; *see also* Tr., p.9, L.8 (indicating the district court's reading of the pre-proof instructions).) Although there was no reason why that instruction would not have been sufficient, *see State v. Trejo*, 132 Idaho 872, 879, 979 P.2d 1230, 1237 (Ct. App. 1999) (recognizing a presumption that jurors follow the instructions they are given), if the district court was concerned that its pre-proof instruction would be flatly ignored by the jury, it could have admonished the jurors again—either while Mr. Morrison was on the witness stand, or prior to the jury's deliberation.

Because there was a great deal of probative value to evidence of the mandatory minimum fixed sentence that Mr. Morrison would have faced had he not testified for the State, and because there was no legitimate interest in keeping that evidence from the jury, it simply cannot be said that the probative value of that evidence was "substantially

[11] The jury instructions are included as an exhibit to the Clerk's Record.

outweighed" by any of the countervailing interests identified in Rule 403. Thus, the district court abused its discretion in precluding Mr. Ruiz from cross-examining Mr. Morrison as to that mandatory minimum fixed sentence.

E. The District Court's Error In Preventing Mr. Ruiz From Fully Cross-Examining A Key Prosecution Witness Was Not "Harmless" And, Thus, Mr. Ruiz Is Entitled To A New Trial

Admittedly, "the Constitution entitles a criminal defendant [only] to a fair trial, not a perfect one." *Van Arsdall*, 475 U.S. at 681. Thus, not all trial errors—or even all *constitutional* trial errors—require reversal of the defendant's conviction. *Id.* Some errors may be so minor in terms of their effect on the factfinding process that they may be deemed to "harmless." *Chapman v. California*, 386 U.S. 18 (1967).

In determining whether a constitutional error is harmless, the reviewing court determines whether it appears, beyond a reasonable doubt that the error did not contribute to the jury's verdict. *Chapman*, 386 U.S. at 24. "To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." *Yates v. Evatt*, 500 U.S. 391, 403 (1991). The issue is whether the jury actually rested its verdict on evidence beyond a reasonable doubt, independently of the inadmissible evidence. *Id.* at 404-05. "The inquiry, in other words, is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in this trial was surely unattributable to the error." *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993).

In accordance with *Chapman*, upon finding that the district court erred in failing to allow Mr. Ruiz to fully cross-examine Mr. Morrison regarding Mr. Morrison's biases,

prejudices, and ulterior motives, this Court must next determine whether the jury's guilty verdict in this case was *surely* unattributable to the district court's error and was therefore harmless. *Olden*, 488 U.S. at 232-33; *Van Arsdall*, 475 U.S. at 681-684; *Green*, 136 Idaho at 557-58, 38 P.3d at 136-37. Mr. Ruiz submits that this Court can reach no such conclusion. As noted in Mr. Ruiz's statement of facts, the only evidence linking Mr. Ruiz to the controlled buys in this case was the testimony of two individuals: Mr. Morrison and Ms. Larsen. The testimony of both of these individuals, however, is highly suspect since both of them had incentive to misidentify Mr. Ruiz as their drug supplier in an effort to please the State and, thereby, gain more favorable treatment for themselves. If the jury had been allowed to hear about the mandatory minimum fixed sentence that Mr. Morrison avoided by testifying against Mr. Ruiz, it might very well have disbelieved Mr. Morrison's testimony and, not finding Ms. Larsen's questionable testimony to be sufficient to maintain a guilty verdict on its own, it may very well have acquitted Mr. Ruiz. *See Olden*, 488 U.S. at 232-33 (finding reversible error under *Chapman* where the trial court had precluded the defendant from cross-examining the complaining witness about her motive to prevent false testimony); *Davis*, 415 U.S. at 317-21 (not explicitly applying *Chapman*, but nevertheless finding reversible error where the trial court had precluded the defendant from cross-examining a key prosecution witness about his motives to misidentify the defendant). Accordingly, Mr. Ruiz asserts that he is entitled to a new trial.

CONCLUSION

For the foregoing reasons, Mr. Ruiz respectfully requests that his conviction and sentence be vacated, and his case remanded for a new trial.

DATED this 17th day of March, 2008.

ERIK R. LEHTINEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of March, 2008, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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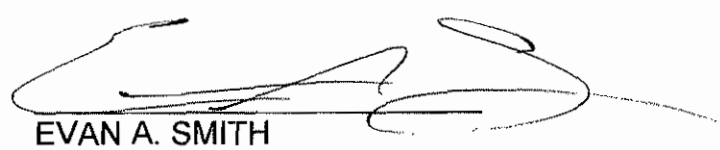

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